House of Representatives

General Assembly

File No. 597

January Session, 2001

Substitute House Bill No. 6771

House of Representatives, May 3, 2001

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE UNIFORM ARBITRATION ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) As used in this act:

(1) "Arbitration organization" means an association, agency, board, commission or other entity that is neutral and initiates, sponsors or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means the Superior Court.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, estate,

trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Sec. 2. (NEW) (a) Except as otherwise provided in sections 9, 15, 19, 20 and 22 to 24, inclusive, of this act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

Sec. 3. (NEW) (a) This act governs an agreement to arbitrate made on or after the effective date of this act.

(b) This act governs an agreement to arbitrate made before the effective date of this act if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(c) On and after October 1, 2002, this act governs an agreement to arbitrate whenever made.

Sec. 4. (NEW) (a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this act to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of subsection (a) of section 5 of this act, subsection (a) of section 6 of this act, section 8 of this act, subsection (a) or (b) of section 17 of this act and section 26 or 28 of this act;

(2) Agree to unreasonably restrict the right under section 9 of this act to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under section 12 of this act to disclosure of any facts by a neutral arbitrator; or

(4) Waive the right under section 16 of this act of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this act, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection (a) or (c) of section 3 of this act, sections 7, 14 and 18 of this act, subsection (c) or (d) of section 20 of this act, section 22, 23 or 24 of this act, subsection (a) or (b) of section 25 of this act or section 29, 30, 31 or 32 of this act.

Sec. 5. (NEW) (a) Except as otherwise provided in section 28 of this act, an application for judicial relief under this act shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this act must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the

manner provided by law or rule of court for serving motions in pending cases.

Sec. 6. (NEW) (a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

Sec. 7. (NEW) (a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate it shall

order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, pursuant to subsection (a) or (b) of this section, it may not order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in section 27 of this act.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Sec. 8. (NEW) (a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect

the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b) of this section.

Sec. 9. (NEW) (a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties, or in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under subsection (c) of section 15 of this act not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack or insufficiency of notice.

Sec. 10. (NEW) (a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) The claims subject to the agreements to arbitrate arise in

substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Sec. 11. (NEW) (a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

Sec. 12. (NEW) (a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and

arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under subdivision (2) of subsection (a) of section 23 of this act for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court under subdivision (2) of subsection (a) of section 23 of this act may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party is presumed to act with evident partiality under subdivision (2) of subsection (a) of section 23 of this act.

(f) If the parties to an arbitration proceeding agree to the procedures

of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under subdivision (2) of subsection (a) of section 23 of this act.

Sec. 13. (NEW) If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under subsection (c) of section 15 of this act.

Sec. 14. (NEW) (a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by section 12 of this act does not cause any loss of immunity under this section.

(d) In a judicial, administrative or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records as to any statement, conduct, decision or ruling occurring during the arbitration proceeding to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under subdivision (1) or (2) of subsection (a) of section 23 of this act if the movant establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization or representative reasonable attorney's fees and other reasonable expenses of litigation.

Sec. 15. (NEW) (a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives

the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section 11 of this act to continue the proceeding and to resolve the controversy.

Sec. 16. (NEW) A party to an arbitration proceeding may be represented by a lawyer.

Sec. 17. (NEW) (a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be

taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious and cost effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious

and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

Sec. 18. (NEW) If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section 19 of this act. A prevailing party may make a motion to the court for an expedited order to confirm the award under section 22 of this act, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies or corrects the award under section 23 or 24 of this act.

Sec. 19. (NEW) (a) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

Sec. 20. (NEW) (a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in subdivision (1) or (3) of subsection (a)

of section 24 of this act;

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section shall be made and notice given to all parties within twenty days after the movant receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.

(d) If a motion to the court is pending under section 22, 23 or 24 of this act, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in subdivision (1) or (3) of subsection (a) of section 24 of this act;

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to subsection (a) of section 19 of this act and sections 22, 23 and 24 of this act.

Sec. 21. (NEW) (a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other

reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section 22 of this act or for vacating an award under section 23 of this act.

(d) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

Sec. 22. (NEW) After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 20 or 24 of this act or is vacated pursuant to section 23 of this act.

Sec. 23. (NEW) (a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was: (A) Evident partiality by an arbitrator appointed as a

neutral arbitrator; (B) corruption by an arbitrator; or (C) misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy or otherwise conducted the hearing contrary to section 15 of this act so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under subsection (c) of section 15 of this act not later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within ninety days after the movant receives notice of the award pursuant to section 19 of this act or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 20 of this act, unless the movant alleges that the award was procured by corruption, fraud or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the movant.

(c) If the court vacates an award on a ground other than that set forth in subdivision (5) of subsection (a) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2) of subsection (a) of this section, the rehearing must be before a

new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4) or (6) of subsection (a) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in subsection (b) of section 19 of this act for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Sec. 24. (NEW) (a) Upon motion made within ninety days after the movant receives notice of the award pursuant to section 19 of this act or within ninety days after the movant receives notice of a modified or corrected award pursuant to section 20 of this act, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

Sec. 25. (NEW) (a) Upon granting an order confirming, vacating

without directing a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

Sec. 26. (NEW) (a) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this act.

Sec. 27. (NEW) A motion pursuant to section 5 of this act shall be made in the court for the judicial district in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court for the judicial district in which it was held. Otherwise, the motion may be made in the court for any judicial district in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court for any judicial district in this state. All subsequent motions shall be made in the court hearing the initial motion unless the court otherwise directs.

Sec. 28. (NEW) (a) An appeal may be taken from: (1) An order denying a motion to compel arbitration; (2) an order granting a motion to stay arbitration; (3) an order confirming or denying confirmation of an award; (4) an order modifying or correcting an award; (5) an order vacating an award without directing a rehearing; or (6) a final judgment entered pursuant to this act.

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

Sec. 29. (NEW) In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 30. (NEW) The provisions of this act governing the legal effect, validity or enforceability of electronic records or signatures and of contracts formed or performed with the use of such records or signatures conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, P. L. No. 106-229, 114 Stat. 464 (2000), and supersede, modify and limit the Electronic Signatures in Global and National Commerce Act.

Sec. 31. Subsection (c) of section 4-61 of the general statutes is repealed and the following is substituted in lieu thereof:

(c) Once a notice of claim is given to the agency head as required by subsection (b) of this section, each party shall allow the other to examine and copy any nonprivileged documents which may be relevant either to the claimant's claims or to the state's defenses to such claims. Requests to examine and copy documents which have been prepared by the contractor in order to submit a bid shall be subject to a claim of privilege and grounds for an application to any court or judge **[**pursuant to section 52-415**]** for a decision on whether such documents constitute trade secrets or other confidential research, development or commercial information and whether such documents shall not be disclosed to the state or shall be disclosed to the state only in a designated way. Any such documents for which no decision is sought or privilege obtained shall not be subject to disclosure under section 1-210 and shall not be disclosed by the agency to any person or agency that is not a party to the arbitration. Such documents shall be used only for settlement or litigation of the parties' claims. The arbitrators shall determine any issue of relevance of such documents after an in camera inspection. The arbitrators shall seal such documents during arbitration and shall return such documents to the claimant after final

disposition of the claim.

Sec. 32. Subdivision (10) of subsection (d) of section 7-473c of the general statutes is repealed and the following is substituted in lieu thereof:

(10) The decision of the panel and the resolved issues shall be final and binding upon the municipal employer and the municipal employee organization except as provided in subdivision (12) of this subsection and, if such award is not rejected by the legislative body pursuant to said subdivision, except that a motion to vacate or modify such decision may be made in accordance with sections **[**52-418 and 52-419**]** 23 and 24 of this act.

Sec. 33. Subdivision (15) of subsection (d) of section 7-473c of the general statutes is repealed and the following is substituted in lieu thereof:

(15) Within five days after the completion of such review the arbitrators or single arbitrator shall render a decision with respect to each rejected issue which shall be final and binding upon the municipal employer and the employee organization except that a motion to vacate or modify such award may be made in accordance with sections **[**52-418 and 52-419**]** 23 and 24 of this act. The decision of the arbitrators or single arbitrator shall be in writing and shall include specific reasons and standards used by each arbitrator in making a decision on each issue. The decision shall be filed with the parties. The reasonable costs of the arbitrators or single arbitrator and the cost of the transcript shall be paid by the legislative body. Where the legislative body of a municipal employer is the town meeting, the board of selectmen shall perform all of the duties and shall have all of the authority and responsibilities required of and granted to the legislative body under this subsection.

Sec. 34. Subdivision (5) of section 7-478e of the general statutes is

repealed and the following is substituted in lieu thereof:

(5) The panel shall conclude the hearing within fifteen days after its commencement. Within ten days after the hearing, the panel shall issue, upon majority vote, and file with the State Board of Mediation and Arbitration its decision which shall immediately and simultaneously distribute a copy thereof to each party. In making its decision, the panel shall accept the last best offer of either of the parties. As part of the arbitration decision, each member shall state the specific reasons and standards in making a choice on each unresolved issue. In arriving at its decision, the panel shall be limited to the consideration of the criteria set forth in subdivision (2) of subsection (d) of section 7-473c. The decision of the panel shall be final and binding upon the municipal employer and the municipal employee organization except as provided in section 7-478f and, if such award is not rejected by the legislative body pursuant to section 7-478f, except that a motion to vacate or modify such decision may be made in accordance with sections **[**52-418 and 52-419**]** 23 and 24 of this act.

Sec. 35. Subdivision (4) of section 7-478f of the general statutes is repealed and the following is substituted in lieu thereof:

(4) Not later than December 15, 2000, after the completion of such review, the arbitrators or single arbitrator shall render a written decision with respect to each rejected issue which shall be final and binding upon the municipal employer and the employee organization except that a motion to vacate or modify such award may be made in accordance with sections **[**52-418 and 52-419**]** 23 and 24 of this act. The arbitrators or single arbitrator shall accept the last best offer of either of the parties. The decision of the arbitrators or single arbitrator shall be in writing and shall include specific reasons and standards used by each arbitrator in making a decision on each issue. The decision shall be filed with the parties. The reasonable costs of the arbitrators or single arbitrator and the cost of the transcript shall be paid by the

legislative body. Where the legislative body of a municipal employer is the town meeting, the board of selectmen shall perform all of the duties and shall have all of the authority and responsibilities required of and granted to the legislative body under this subsection.

Sec. 36. Section 10-153m of the general statutes is repealed and the following is substituted in lieu thereof:

In any action brought pursuant to section **[**52-418**]** 23 of this act to vacate an arbitration award rendered in a controversy between a board of education and a teacher or the organization which is the exclusive representative of a group of teachers, or to confirm, pursuant to section **[**52-417**]** 22 of this act, such an arbitration award, reasonable attorney's fees and costs may be awarded in accordance with the following: (1) Where the board of education moves to vacate an award and the award is not vacated, the court may award reasonable attorney's fees and costs to the teacher; (2) where the teacher moves to vacate an award and the award is not vacated, the court may award reasonable attorney's fees and costs to the board of education; (3) where the teacher moves to confirm an award, if the board of education refuses to stipulate to such confirmation and if the award is confirmed, the court may award reasonable attorney's fees and costs to the teacher; (4) where the board of education moves to confirm an award, if the teacher refuses to stipulate to such confirmation and if the award is confirmed, the court may award reasonable attorney's fees and costs to the board of education.

Sec. 37. Section 31-92a of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Each public member of the Board of Mediation and Arbitration, including alternates, shall be sworn once at the beginning of **[**his**]** the member's term of office (1) to support the Constitution of the United States, and the Constitution of the state of Connecticut, so long as **[**he**]** the member continues a citizen thereof, (2) to faithfully discharge,

according to law, the duties of the office of member of the Board of Mediation and Arbitration for the state of Connecticut to the best of [his] the member's abilities, (3) to hear and examine all matters in controversy which come before [him] the member during [his] the member's term faithfully and fairly, and (4) to make a just award according to the best of [his] the member's understanding. Notwithstanding the provisions of [subsection (d) of section 52-414] section 17 of this act, the taking of this oath shall cover all matters heard during the term and the completion of any matter pending at the expiration of such term.

(b) Each member of the Board of Mediation and Arbitration representing the interests of employees or employers, including alternate members, shall be sworn once at the beginning of [his] the member's term of office (1) to support the Constitution of the United States, and the Constitution of the state of Connecticut, so long as [he] the member continues a citizen thereof, (2) to faithfully discharge, according to law, the duties of the office of member of the Board of Mediation and Arbitration for the state of Connecticut to the best of [his] the member's abilities, (3) to represent the interests of employees or employers respectively in hearing and examining all matters in controversy, and (4) to make a just award according to the best of [his] the member's understanding. Notwithstanding the provisions of [subsection (d) of section 52-414] section 17 of this act, the taking of this oath shall cover all matters heard during the term and the completion of any matter pending at the expiration of such term.

Sec. 38. Subdivision (2) of subsection (b) of section 38a-9 of the general statutes is repealed and the following is substituted in lieu thereof:

(2) The commissioner shall prepare a list of at least ten persons, who have not been employed by the department or an insurance company during the preceding twelve months, to serve as arbitrators in the

settlement of such disputes. The arbitrators shall be members of any dispute resolution organization approved by the commissioner. One arbitrator shall be appointed to hear and decide each complaint. Appointment shall be based solely on the order of the list. If an arbitrator is unable to serve on a given day, or if either party objects to the arbitrator, then the next arbitrator on the list will be selected. The department shall schedule arbitration hearings as often, and in such locations, as it deems necessary. Parties to the dispute shall be provided written notice of the hearing, at least ten days prior to the hearing date. The commissioner may issue subpoenas on behalf of the arbitrator to compel the attendance of witnesses and the production of documents, papers and records relevant to the dispute. Decisions shall be made on the basis of the evidence presented at the arbitration hearing. Where the arbitrator believes that technical expertise is necessary to decide a case, **[**he**]** the arbitrator may consult with an independent expert recommended by the commissioner. The arbitrator and any independent technical expert shall be paid by the department on a per dispute basis as established by the commissioner. The arbitrator, as expeditiously as possible, but not later than fifteen days after the arbitration hearing, shall render a written decision based on the information gathered and disclose the findings and the reasons to the parties involved. The arbitrator shall award filing fees to the prevailing party. If the decision favors the consumer the decision shall provide specific and appropriate remedies including interest at the rate of ten per cent on the arbitration award concerning the disputed amount of the claim, retroactive to the date of payment for the undisputed amount of the claim. The decision may include costs for loss of use and storage of the motor vehicle and shall specify a date for performance and completion of all awarded remedies. Notwithstanding any provision of the general statutes or any regulation to the contrary, the Insurance Department shall not amend, reverse, rescind, or revoke any decision or action of any arbitrator. The department shall contact the consumer within ten working days after

the date for performance, to determine whether performance has occurred. Either party may make application to the superior court for the judicial district in which one of the parties resides or, when the court is not in session, any judge thereof for an order confirming, vacating, modifying or correcting any award, in accordance with the provisions of sections **[**52-417, 52-418, 52-419 and 52-420**]** 22, 23 and 24 of this act. If it is determined by the court that either party's position after review has been improved by at least ten per cent over that party's position after arbitration, the court, in its discretion, may grant to that party its costs and reasonable attorney's fees. No evidence, testimony, findings, or decision from the department arbitration procedure shall be admissible in any civil proceeding, except judicial review of the arbitrator's decision as contemplated by this subsection.

Sec. 39. Subdivision (4) of subsection (c) of section 42-181 of the general statutes is repealed and the following is substituted in lieu thereof:

(4) Any other remedies available under the applicable warranties, section 42-179, this section and sections 42-182 to 42-184, inclusive, or the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect on October 1, 1982, other than repair of the vehicle. The decision shall specify a date for performance and completion of all awarded remedies. Notwithstanding any provision of the general statutes or any regulation to the contrary, the Department of Consumer Protection shall not amend, reverse, rescind or revoke any decision or action of an arbitration panel. The department shall contact the consumer, within ten working days after the date for performance, to determine whether performance has occurred. The manufacturer shall act in good faith in abiding by any arbitration decision. In addition, either party to the arbitration may make application to the superior court for the judicial district in which one of the parties resides or, when the court is not in session, any judge thereof for an order confirming, vacating,

modifying or correcting any award, in accordance with the provisions of this section and sections [52-417, 52-418, 52-419 and 52-420] 22, 23 and 24 of this act. Upon filing such application the moving party shall mail a copy of the application to the Attorney General and, upon entry of any judgment or decree, shall mail a copy of such judgment or decree to the Attorney General. A review of such application shall be confined to the record of the proceedings before the arbitration panel. The court shall conduct a de novo review of the questions of law raised in the application. In addition to the grounds set forth in sections [52-418 and 52-419] 23 and 24 of this act, the court shall consider questions of fact raised in the application. In reviewing questions of fact, the court shall uphold the award unless it determines that the factual findings of the arbitrators are not supported by substantial evidence in the record and that the substantial rights of the moving party have been prejudiced. If the arbitrators fail to state findings or reasons for the award, or the stated findings or reasons are inadequate, the court shall search the record to determine whether a basis exists to uphold the award. If it is determined by the court that the manufacturer has acted without good cause in bringing an appeal of an award, the court, in its discretion, may grant to the consumer [his] costs and reasonable attorney's fees. If the manufacturer fails to perform all awarded remedies by the date for performance specified by the arbitrators, and the enforcement of the award has not been stayed, [pursuant to subsection (c) of section 52-420,] then each additional day the manufacturer wilfully fails to comply shall be deemed a separate violation for purposes of section 42-184.

Sec. 40. Sections 52-408 to 52-424, inclusive, of the general statutes are repealed.

Sec. 41. This act shall take effect October 1, 2001, except that sections 31 to 40, inclusive, shall take effect October 1, 2002.

Statement of Legislative Commissioners:
Sections 31 to 39 were added for accuracy, making conforming changes to the general statutes.

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Judicial Department

Municipal Impact: None

Explanation

The bill is intended to adopt the Revised Uniform Arbitration Act, which creates a default procedure where an agreement between parties is not specific as to methods of dispute resolution. While the bill would impact certain contracting parties, passage of the bill would not result in any fiscal impact to the state.

OLR Bill Analysis
sHB 6771

AN ACT CONCERNING THE UNIFORM ARBITRATION ACT.

SUMMARY:
This bill implements, with one exception, the Revised Uniform Arbitration Act (RUAA). It codifies arbitration rules, standards, and common practices that are currently not regulated by statute, but permits parties to waive or modify many of them. In this respect, it creates a default procedure when the parties' arbitration agreement does not otherwise specify one. The bill covers:

1. the enforceability of agreements;

2. notice requirements;

3. arbitrability;

4. court jurisdiction and procedures before the completion of an arbitration;

5. arbitrators' qualifications, information they must disclose, and their powers;

6. arbitration proceedings; and

7. court proceedings after an award has been issued.

These provisions appear to be inapplicable to arbitrations mandated by other state laws except to the extent that those laws incorporate them.

The bill repeals existing general arbitration statutes on October 1, 2002. In the meantime, the bill will apply to (1) arbitration agreements made after September 30, 2001 and (2) earlier agreements, if all parties agree. After September 30, 2002, it will cover agreements regardless of their execution date.

The repeal of current laws eliminates an arbitrator's authority to ask courts for legal interpretations during arbitration proceedings. It also eliminates a method for agreed-upon submissions of pending court cases to binding arbitration. Finally, it eliminates specific provisions relating to required court filings and judicial disposition procedures, substituting instead the bill's generic language.

The bill eliminates references to current law in other laws as of October 1, 2002 and instead refers to the applicable RUAA provision, if one exists.

Effective date: October 1, 2001, except the repeal of existing arbitration statutes and modification of the municipal employee, teacher, Board of Mediation and Arbitration, insurance, and consumer protection laws are effective October 1, 2002.

UNIFORM CONSTRUCTION

The bill directs that, in applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (Currently, no state has adopted the RUAA.) This provision cannot be waived or modified by the parties.

By law, interpretations by courts of other states of their laws are not binding on Connecticut courts construing the laws of this state.

ENFORCEABLE AGREEMENTS

The bill appears to expand substantially the methods people can use to create arbitration agreements. It specifies that an "agreement," which is undefined, contained in a "record" to submit to arbitration any existing or future controversy between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract. It defines "record" as "information that is inscribed on a tangible medium that is stored in an electronic or other medium and is retrievable in perceivable form."

The bill states that it modifies, supercedes, and limits the federal

Electronic Signatures in Global and National Commerce Act, P.L. 106-229, which regulates the use of electronic records and signatures in interstate and foreign commerce. It is unclear whether federal law preempts this provision.

Current law requires that arbitration agreements be either (1) contained in written contracts or in a separate writing executed by the parties to any written contract that specifies arbitration of any controversy arising out of the contract, (2) contained in written articles of association or bylaws of an association or corporation which require members to submit future controversies to arbitration, or (3) written agreements between two or more people to submit to arbitration any controversy existing between them. It permits legal and equitable principles for the avoidance of written contracts (such as fraud, lack of consideration, or unconscionability) to be grounds for making arbitration agreements invalid, revocable, or unenforceable.

NOTICE

The bill contains a general definition of notice that parties can waive or modify. It specifies that a person gives notice when he takes reasonably necessary action to inform another in ordinary course, regardless of whether that person actually learns about it. A person receives notice under this provision if he receives it or learns about it, or when the notice is delivered to his home, office, or other location he designated. "Persons" under the bill include people, government entities, businesses, and other legal and commercial entities.

Current arbitration laws do not define notice.

Notice of Initiation of Arbitration Proceeding

The bill has a different notice requirement when a party seeks to initiate an arbitration proceeding. It specifies that unless the parties have agreed otherwise, they must do this by certified or registered mail, return receipt requested and obtained, or by a service method (such as personal delivery) permitted for beginning a civil lawsuit. The notice must describe the controversy and the requested remedy. If the parties have agreed to a different arrangement for giving notice, the bill specifies that it may be used if it is not unreasonably restrictive.

Parties who appear at the hearing waive objections based on lack of notice or insufficiency unless they object no later than at the beginning of the hearing. Parties can make other agreements for making or preserving these objections.

COURT AUTHORITY

Jurisdiction and Venue Generally

The Superior Court has exclusive jurisdiction to enter judgment on arbitration awards under the bill when the arbitration agreement provides for arbitration in the state. Its judges can enforce other arbitration agreements if the court has jurisdiction over the dispute and the parties. Once a controversy arises, parties can make other agreements about jurisdiction.

The bill specifies that applications for court relief must be filed by motion in Superior Court and heard in the manner provided by law or rule of court for making and hearing such motions.

When a pending judicial proceeding involves a claim that a person maintains is arbitrable, the bill requires filing of motions in that court to compel arbitration. Otherwise, motions may be filed in the court in a location that the parties have agreed to. In the absence of an agreement, they must be filed (1) where the arbitration is being held; (2) in any judicial district in Connecticut where an adverse party resides or has an office; or (3) if no adverse party has a residence or office in Connecticut, in any Connecticut Superior Court. The bill permits parties to arbitration agreements to waive, vary, or modify this provision after a controversy arises.

The bill also specifies that, unless the parties have agreed to a different rule, notice of an initial court motion must be served in the manner provided by law for service of a summons in a civil action. Service of subsequent motions can be given in the manner provided for pending civil cases.

Arbitrability

Unless the parties agree otherwise, the bill directs courts to decide

whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate. It directs arbitrators to decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable. When a party has refused to arbitrate, courts must decide whether the agreement is enforceable.

Current statutes do not specify who decides these issues, but courts generally follow this rule.

Compelling Arbitration

The bill's mandatory procedures require a party to file a motion showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement. If the refusing party does not appear or does not oppose the motion, the court must order the parties to arbitrate, unless it finds that there is no enforceable agreement.

If the refusing party opposes the motion, the court must proceed "summarily" to decide the issue and order the parties to arbitrate, unless it finds that there is no enforceable arbitration agreement. But it cannot refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

The law currently specifies that (1) applications for orders to proceed with (i.e., compel) arbitration must be made by writ of summons and complaint and (2) complaint allegations not answered within five days of the complaint's return date are deemed denied by operation of law. They must be filed in the Superior Court district where one of the parties resides or, when land is involved, in the court where the land is located. If the courts are closed, applications can be filed with any Superior Court judge.

Judges must hear the matter either at a short calendar session, or as a privileged case, or otherwise, in order to dispose of the case with the least possible delay. Under the bill, these provisions are repealed October 1, 2002.

Motions to Stay Arbitration

The bill permits people to file motions when an arbitration proceeding has been threatened or initiated and they claim that there is no arbitration agreement. As with motions to compel, the court must decide this issue summarily. If it finds that there is an enforceable arbitration agreement, it must order arbitration to proceed.

The bill permits an arbitrator to go forward with his proceedings while the court considers the challenge. But it permits (1) judges to order otherwise and (2) parties to make different agreements.

Current law has no express mechanism for obtaining court orders to stay arbitrations.

Court Order Staying Court Proceedings

If a judge orders arbitration, he must stay any judicial proceeding that involves a claim subject to the arbitration, unless he determines that it would not be just. Where not all claims in the court proceeding are subject to arbitration, the bill permits the judge to order a partial stay, permitting the lawsuit to continue with respect to non-arbitrable issues.

Current law permits the filing of motions to stay court proceedings. It has a similar standard for granting them, but unlike the bill, requires the moving party to show that he is ready and willing to proceed with the arbitration.

Provisional Remedies

Under the bill, before an arbitrator is appointed and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause, may enter orders for provisional remedies to protect the effectiveness of the arbitration proceeding. The bill specifies that the judge's authority is the same as if the controversy were the subject of a civil action.

But after an arbitrator has been appointed and is authorized to act, the bill provides that judges can order provisional remedies only if the

matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy. This appears to include the right to ask a judge to direct an arbitrator to conduct the hearing promptly and render a timely decision. The bill specifies that a party filing a court motion for provisional relief does not waive his right to arbitration by doing so.

Parties to arbitration agreements can waive the bill's provisional remedy provisions, or make other agreements, after a particular controversy arises.

Under current law, courts have the authority to issue provisional remedies (pendente lite orders) throughout the arbitration process to protect parties' rights and secure enforcement if an award in their favor is ultimately issued and confirmed.

Consolidations

Unless the parties have agreed otherwise, the bill permits (1) any party to an arbitration agreement or proceeding to file a motion and (2) the court to order consolidation of separate arbitration proceedings as to all or some of the claims. They may do this if:

1. there are separate agreements to arbitrate or separate arbitration proceedings between the same people or entities or one of them is a party to a separate agreement to arbitrate or a separate arbitration with a third person;

2. the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

3. the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

4. prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay, prejudice, or hardship to parties opposing consolidation.

The bill permits judges to order consolidation of arbitration proceedings on some claims and allow other claims to be resolved in

separate proceedings. But it cannot consolidate the claims of a party whose agreement prohibits consolidation.

Current law has no consolidation provision.

ARBITRATORS

Appointing Arbitrators

The bill permits parties to agree on a method for appointing an arbitrator or arbitration panel and requires them to follow it unless the method fails. But it specifies that the court must appoint them on motion of any party if (1) they cannot agree, (2) the agreed-upon method fails, or (3) an appointed arbitrator fails or is unable to act and a successor has not been appointed. Court-appointed arbitrators have all the powers of the arbitrator designated in the arbitration agreement or appointed pursuant to the agreed method.

The bill's provisions are similar to the requirements in the current law, although the current law specifies that such proceedings be initiated and decided in the same way as applications to proceed with arbitrations. Current law also specifies that when a substitute or additional arbitrator is appointed to a case where evidence has already been presented, that person must re-hear the case unless the parties agree in writing otherwise.

Required Disclosures by Arbitrators

Unless the parties agree otherwise, and the scope of their agreement does not unreasonably restrict the parties' rights to disclosure, before accepting appointment to serve as arbitrator, a person must make reasonable inquiry and disclose to all parties and to any other arbitrators any known facts that a reasonable person would consider likely to affect his impartiality. Information that must be disclosed under the bill includes (1) any financial or personal interest in the outcome of the arbitration proceeding and (2) any existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

The bill specifies that a person appointed as a neutral arbitrator who does not disclose the above information is presumed to have acted with evident impartiality, and that a court may vacate his award on that basis.

Arbitrators must continue to disclose to all parties and other arbitrators facts that they learn after accepting appointment that a reasonable person would consider likely to affect the arbitrator's impartiality.

Current statutes do not have information disclosure provisions.

Unless the parties agree otherwise, the bill prohibits a person with a known, direct, and material interest in the outcome of the arbitration proceeding, or a known, existing, and substantial relationship with a party to serve as a neutral arbitrator. There is no similar provision in current law.

Objections to an Arbitrator's Appointment or Continued Service

The bill requires parties to make "timely" objections to an arbitrator's appointment, both when he discloses a fact or when he does not disclose a fact that he should have. In the absence of an agreement between the parties as to what constitutes a timely objection, it is unclear what the bill's time limits are. The bill also specifies that parties who have agreed to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made must comply substantially with those before asking a court to vacate an award on evident partiality grounds.

Current law, which permits courts to vacate awards when they determine that the arbitrator did not act impartially, does not specifically require parties to have first objected to the arbitrator.

Arbitrator and Arbitration Organization Immunity

The bill specifies that an arbitrator and an arbitration organization, acting in those capacities, have the same immunity in civil lawsuits as Superior Court judges have. (By law, judges are immune from liability for actions taken in their judicial capacity.) The bill specifies that an

arbitrator's failure to disclose required personal or financial information to the parties or other arbitrators does not strip him of this immunity and that this immunity supplements any immunity under other law.

The bill also specifies that arbitrators and arbitration organization representatives are not competent (i.e., cannot) to testify in judicial, administrative, or similar proceedings. They can only be required to produce records concerning any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the same extent as a state court judge acting in a judicial capacity. But the bill does not apply if testimony or records are needed to determine an arbitrator or arbitration organization's claim against a party to the arbitration proceeding (such as for unpaid fees) or to a motion to vacate hearing when the moving party establishes a prima facie case (i.e., makes a preliminary showing) of misconduct by an arbitrator.

The bill requires courts to award arbitrators and arbitration organizations attorneys fees and other reasonable costs of litigation when they are sued or a person seeks to compel them to testify or produce records but the court finds they are immune from civil liability or incompetent to testify.

These provisions of the bill cannot be waived. Current law does not afford arbitrators immunity or shield them from testifying.

Arbitration Panels

Unless the parties agree otherwise, the bill specifies that when more than one arbitrator is designated to decide an issue (i.e., a panel), the decision of a majority must be obtained. But all must conduct an arbitration hearing. This is consistent with existing law.

ARBITRATION PROCEEDINGS

Unless the parties agree otherwise, the bill permits arbitrators to handle proceedings in the manner they consider appropriate for a fair and expeditious disposition. They may hold conferences before the hearing and, among other things, determine the admissibility, relevance, material value, and weight of evidence. And they may

order such provisional remedies as they determine are necessary to protect the arbitral process.

Under the bill, they may also decide claims or issues summarily if all interested parties agree or when one party requests this and gives notice of the request to all other parties to the proceeding. The parties must have a reasonable opportunity to respond.

Subpoenas and Depositions

The bill also gives arbitrators the power to administer oaths and issue subpoenas directing witnesses to attend and produce documents at any hearing. It directs them to serve subpoenas in the same way as for civil actions, and it permits any party or the arbitrator to file a court motion and have a judge enforce the subpoena in the same manner that he would in a civil action. Parties can waive this rule after a controversy arises.

Currently, both arbitrators and others legally authorized to issue subpoenas (such as a party's lawyer) may issue these subpoenas. It appears that, under the bill, only arbitrators may do so unless the parties agree otherwise.

The bill permits arbitrators in order to make the proceedings fair, expeditious, and cost effective, to allow the taking of depositions for use as evidence at the hearing. They may specify the conditions under which they are taken. Witnesses who may be deposed in this manner include those who cannot be subpoenaed for or are unable to attend a hearing. Parties can waive this rule or make other agreements after a controversy arises. There is no similar provision in current statutes.

Discovery

Unless the parties agree otherwise, arbitrators under the bill may also permit the parties to engage in discovery (i.e., gather information through written requests or depositions to prepare for the arbitration hearing). The arbitrator must take into account the needs of the parties and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective. When discovery is permitted, arbitrators can order parties to comply, issue discovery

subpoenas, and have the same power as Superior Court judges to take action against people who fail to comply. There is no similar provision in current law.

The bill gives the arbitrator the authority to issue a protective order to prevent the disclosure of privileged or confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in the state. It specifies that all laws compelling a person under subpoena to testify and all witness fees applicable in court proceedings also apply to arbitrations.

Court Enforcement

The bill permits courts to enforce an arbitrator's subpoena or discovery-related orders, but their powers depend on whether the matter involves in-state or out-of-state proceedings. They may order the attendance of witnesses within the state. But in cases where an arbitrator asks them to enforce his order directing someone to produce records or other evidence at an out-of-state proceeding, they may set conditions to make the arbitration proceeding fair, expeditious, and cost effective. The bill requires subpoenas or discovery-related orders from out-of-state arbitrators to be served in the manner provided under Connecticut law for serving subpoenas in a civil action.

Current law permits courts to enforce an arbitrator's or other party's subpoenas summoning witnesses or documents to a hearing but does not distinguish between in-state and out-of-state arbitrations. The bill appears to extinguish parties' right to judicial enforcement of subpoenas they issue.

Hearings

Unless the parties agree otherwise, the arbitrator must set a time and place and give notice of the hearing at least five days in advance. Unless a party to the arbitration proceeding objects to the lack or insufficiency of notice by the beginning of the hearing, his appearance at the hearing waives the objection. Current statutes do not specify how much advance notice parties must get, nor provide for the waiver of objections to the adequacy of hearing notices.

The bill specifies that, unless the parties agree otherwise, a party to an arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing. A lawyer may represent them, but the bill permits labor arbitration and post-controversy agreements to the contrary. Current statutes contain no similar provisions.

Hearings may be adjourned by the arbitrator or if any party requests it and shows good cause for adjournment. The bill specifies that hearings cannot be postponed to a time later than that fixed by the arbitration agreement for making the award unless the parties consent. Unless the parties have agreed otherwise, the bill gives the arbitrator the authority to proceed and decide controversies upon the evidence presented when a party who was "duly notified" of the proceeding does not appear. The bill's provisions are consistent with existing law.

Pre-award Rulings

The bill requires arbitrators to incorporate a favorable pre-award ruling (i.e., an interim ruling disposing of only some issues or claims) into an award if the prevailing party requests it. The prevailing may then file a court motion for an expedited order confirming the award, which the court must decide summarily. The court must issue an order to confirm the award unless the court vacates, modifies, or corrects it on grounds specified by the bill. This provision of the bill cannot be waived or altered by agreement.

Current law does not specifically permit parties to bring pre-award rulings before the courts.

Awards

Unless the parties agree otherwise, the arbitrator must make a record of his award. Any other arbitrator concurring with it must either sign or otherwise "authenticate" it. Either the arbitrator or the arbitration organization must give notice and a copy of the award to each party. The bill specifies that the award must be made within the time specified by the agreement to arbitrate, or if not specified, within the time ordered by the court.

These provisions are consistent with current law, although current law specifies that when the parties' agreement is silent, the time limit is 30 days from the close of the hearing or from the date fixed for the submission of materials to the arbitrator (such as briefs) after the hearing concludes.

Courts can extend or the parties may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. Unless the parties agree otherwise, a party waives any objection that the award was not timely unless he objects to the arbitrator before he receives notice of the award.

Currently, an award issued after time limits have expired has no legal effect unless the parties have agreed in writing to be bound by it.

Motions to the Arbitrator to Modify or Correct

Unless otherwise agreed, parties may ask the arbitrator by motion to modify or correct an award for the following reasons:

1. evident mathematical miscalculation or mistake in the description of a person, thing, or property referred to in the award;

2. the award is imperfect in a matter of form not affecting the merits of the decision;

3. because the arbitrator has not made a final and definite award on a claim that was submitted to him; or

4. to clarify the award.

Motions must be filed within 20 days after the moving party receives notice of the award, and he must give notice to all parties. Objections must be filed within 10 days of receipt. The latter deadline cannot be waived or modified.

Current law has no similar provisions.

Remedies

Unless the parties have specified otherwise, the bill permits arbitrators to award punitive and exemplary damages when such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim. If the arbitrators do, the award must specify the factual and legal justification for doing so. It must also state separately the amount of the punitive damages or other exemplary relief.

The bill also permits arbitrators to award reasonable attorneys fees and other arbitration costs if such is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration. Parties may waive or modify this provision.

For all other remedies, the bill authorizes arbitrators, absent agreement of the parties, to fashion such remedies as they consider just and appropriate under the circumstances of the arbitration proceeding. It specifies that courts cannot refuse to confirm or vacate awards on the grounds that the arbitrator's remedy could not or would not be granted by a court.

The bill specifies that, absent agreement, an arbitrator's expenses and fees, together with other expenses must be paid as provided in the award.

Current law does not expressly address remedies. Parties may raise this issue in a motion to vacate, claiming that the arbitrator did not have the authority to order a particular remedy.

POST-ARBITRATION COURT PROCEEDINGS

Motion to Confirm

The bill permits parties to file court motions to confirm an arbitrator's award and requires courts to grant them unless they modify, correct, or vacate the award at the request of another party. This rule cannot be waived.

Current law requires such motions to be filed within one year of the

award, but the bill does not specify a time limit. It also specifies that parties applying for these orders (and for orders to modify or vacate an award) must also include (1) the arbitration agreement; (2) substitute arbitrator appointment documentation, if appropriate; (3) written referrals to courts for legal interpretations during the arbitration, if appropriate; (4) written extensions of award deadlines; (5) the award; (6) notices and other court documents relating to the application; and (7) court orders relating to it. The bill eliminates these requirements as of October 1, 2002.

Motion to Vacate

The bill requires courts to vacate an award if:

1. it was procured by corruption, fraud, or other undue means;

2. there was (a) evident partiality by an arbitrator appointed as a neutral, (b) corruption by an arbitrator, or (c) misconduct by an arbitrator prejudicing the rights of a party;

3. an arbitrator refused to postpone the hearing upon showing of sufficient cause, refused to consider evidence material to the controversy, or otherwise substantially prejudiced a party's rights by the manner in which he conducted the hearing;

4. an arbitrator exceeded his powers;

5. there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising this objection before or when the hearing began; or

6. the arbitration was conducted without proper notice and a party's rights were substantially prejudiced as a result.

The parties cannot waive or modify these reasons by agreement. Current law establishes the first four criteria as grounds for vacating an award. It also permits this when an arbitrator carried out his authority so imperfectly that the resulting award is not mutual, final, or definite.

The bill requires parties to file motions to vacate within 90 days of (1) receiving notice of the award or (2) receiving notice of a modified or corrected award. Where the moving party alleges that the award was procured by corruption, fraud, or other undue means, he must file the motion within 90 days after he learns, or in the exercise of reasonable care, should have learned this information.

These time limits cannot be waived or modified by agreement. Currently, all motions to vacate must be filed within 30 days of receipt of the notice of an award.

Under the bill, courts that grant a motion to vacate may order re-hearings in cases unless the reason for vacating the award is lack of agreement to arbitrate or where the time limits for issuing the award have expired. In cases where the reason for vacating the award is one involving corruption or misconduct by an arbitrator, a different arbitrator must conduct the rehearing. When the reason involves lack of notice, or an arbitrator's refusal to postpone or acts in excess of his powers, the court may permit him to conduct the rehearing. Arbitrators must render decisions on rehearings within deadlines set for issuance of the original award.

Currently, courts may direct rehearings when the time limits for issuing an award have not expired. They must do so in labor arbitration proceedings, regardless of these time limits, unless a party shows that there is no issue in dispute.

Under the bill, courts that deny a motion to vacate must simultaneously confirm the award, unless a motion to modify or correct has been filed within the bill's time limits. Courts may join proceedings arising from motions to vacate and to modify or correct. There are no similar provisions in current law.

Motions to Modify or Correct

Courts can grant motions to modify or correct for the same reasons that they can re-submit cases to arbitrators, i.e., evident mathematical errors, mistaken identifications in the award, and formal defects that do not affect the merits of their decision. They may also do so when the arbitrator makes an award on a claim that the parties did not

submit to him, so long as the award can be corrected without affecting the merits of his decision on the questions submitted to him.

Motions must be filed within 90 days of the original award or 90 days after an arbitrator modifies or corrects it. If the court grants the motion, it must modify or correct the award and confirm it. If it denies the motion, it must confirm the award unless a motion to vacate is pending. These provisions cannot be waived.

The current limitation period for filing these motions is 30 days from notice of the award.

Court Remand to Arbitrator

When a party has filed a motion in court to confirm, vacate, modify or correct an award, the bill allows the court to return the matter to the arbitrator to consider whether to modify or correct his award for any of the above reasons. Parties cannot vary this by agreement.

Modified or corrected awards must be in records and signed or authenticated by other concurring arbitrators, as is required for the initial award. Parties can ask courts to confirm, enforce, or modify or correct them unless they have agreed otherwise.

APPEALS

Unless the parties have agreed otherwise in a particular controversy, the bill allows appeals to be taken from a Superior Court order:

1. denying a motion to compel arbitration,

2. granting a stay of arbitration proceedings,

3. confirming or denying confirmation of an award,

4. modifying or correcting an award,

5. vacating an award without directing a rehearing, or

6. of final judgment in a covered proceeding.

It specifies that the same rules that apply to appeals from court orders or judgments in civil matters apply to these appeals.

Current law does not permit appeals from the denial of a motion to compel arbitration or the granting of a stay of arbitration proceedings.

CONFORMING CHANGES

The bill makes conforming changes in statutes that refer to provisions that it repeals. These concern State Board of Mediation and Arbitration oaths and arbitration of (1) public works contracts, (2) municipal employee and teacher grievances, (3) insurance disputes, and (4) disputes with car manufacturers.

BACKGROUND

Federal Pre-emption

Arbitrations of disputes covered by the federal Labor Management Relations Act (29 USC §185) are controlled exclusively by the federal common law of labor arbitration, and court action may be brought only in federal courts. And the Federal Arbitration Act (9 USC § 1) generally preempts state laws that conflict with it. (The latter law covers arbitration agreements between entities engaged in interstate commerce when there is an independent basis for the exercise of federal jurisdiction.)

Federal Electronic Signatures in Global and National Commerce Act

This law governs the use of electronic records and signatures in interstate and foreign commerce. It preempts, with limited exceptions, state laws that limit its provisions. One exception is state laws that specifically refer to the Act and specify alternative rules for the use or acceptance of electronic records or electronic signatures that are (1) consistent with the federal law's requirements and (2) do not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving,

communicating, or authenticating electronic records or electronic signatures.

Related Bill

sHB 5925, reported favorably by the Judiciary and Legislative Management committees (File 15) establishes as state law a version of the Uniform Electronic Transaction Act (UETA), which the National Conference of Commissioners on Uniform State Laws adopted on July 29, 1999. UETA provides uniform rules governing electronic commerce transactions. Currently, 22 states have adopted some version of it.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 40 Nay 0